PUBLIC PROSECUTOR

v.

LOO CHANG HOCK

HIGH COURT MALAYA, KUALA LUMPUR
ZAKARIA YATIM J
[SELANGOR CRIMINAL APPEAL NO. 207 OF 1985]
14 JULY 1987

CRIMINAL LAW AND PROCEDURE: *Sentence - Offence punishable under s. 457 Penal Code - Housebreaking by night to commit theft - Accused sentenced to imprisonment and fined - Appeal by prosecution - On ground sentences manifestly inadequate - Whether Appeal Court should interfere with sentences passed by trial Court - If so, what is proper punishment - Whether reformative punishment is appropriate punishment.*

This was an appeal by the Public Prosecutor against the inadequacy of sentences passed by the Magistrate's Court on the respondent in respect of two cases, *vide* Selangor Criminal Appeals No. 206/85 and No. 207/85. In both cases, the respondent pleaded guilty in the Magistrate's Court for the offence punishable under s. 457 of the Penal Code. In respect of Appeal No. 207/85, the respondent was sentenced to 6 months' imprisonment from the date of sentence and a fine of RM3,000, in default 6 months' imprisonment and in respect of Appeal No. 206/85, he was sentenced to 6 months' imprisonment from the date of sentence and a fine of RM2,500, in default 5 months' imprisonment.

The question in this appeal was, whether the High Court should interfere with the sentences passed by the Magistrate. If so, what was the proper punishment to be imposed on the respondent?

Held:

[1] This was a proper case for the Court to interfere with the sentences passed by the Magistrate.

[2] Having taken into consideration the amounts of goods stolen, the *modus operandi* of the respondent in committing the offences and the other relevant factors, the Court ordered the respondent to be sentenced to 2 years' imprisonment in respect of each case and both sentences were to run concurrently. As the respondent had already served 6 months' imprisonment, he was ordered to serve the remaining period from the date of this order.

[3] In addition to the custodial sentences the respondent was ordered to be fined a sum of RM5,000 in respect of each case, in default one year's imprisonment. In enhancing the sentences, the Court did not overlook the fact that the respondent was a 1st offender, he was 18 years old and that he pleaded guilty to the charge in both cases.

[Sentences enhanced.]

Cases referred to:
Chan Sit Hoong v. PP [1975] 1 MLJ 261
R. v. Ball [1952] 35 Cr App Rep 164
R. v. Sargeant [1974] 60 Cr App Rep 74
Zakariya bin Musa v. Public Prosecutor [1985] 2 MLJ 221

Legislation referred to:
Penal Code, ss. 34, 457

For the public prosecutor - P.L. Tan, Deputy Public Prosecutor
For the respondent - C. Sequerah; M/s. Collin Goonting & Co.

JUDGMENT

Zakaria Yatim J:

There are two appeals filed by the Public Prosecutor against the respondent *vide*, Selangor Criminal Appeal No. 206/1985 and Selangor Criminal Appeal No. 207/1985. The appeals are against the inadequacy of sentences passed by the Court below.

For convenience, the two appeals are heard together since the two cases are quite similar and the respondent is the same person.

In 207 of 1985, the respondent was charged in the Magistrate's Court in the following words:

> That you both jointly between 2.00 a.m. on 11 December 1984 and 7.00 a.m. on 11 December 1984 at Syarikat Ken Ken Auto. Acc. No. 104 Jalan SS 15/4 Subang Jaya, in the District of Petaling Jaya, in the State of Selangor, in furtherance of a common intention as defined under s. 34 of the Penal Code, committed House Breaking by entering into a building belonging to Slow Sin Min, K/P: 5937584, used as a place for the custody of property, after the hours of sunset and before the hours of sunrise, in order to the commission of a certain offence punishable with imprisonment, to wit, the offence of theft of (79) Units of Assorted Radio Cassettes valued at RM45,318.98 (11) Pcs. of Assorted Equaliser valued at RM1,890, (5) Pcs. of Assorted Booster valued at RM1,959.95, (1) Pcs. of Remote Control valued at RM240, (29) Sets of Assorted Speakers valued at RM8,699.90, (2) Pcs. of Power Windows valued at RM550, and (32) Sets of Assorted Spot Lights valued at RM938.40, to the total value of RM59,597.23, and that you have thereby committed an offence punishable under s. 457 of the Penal Code.

In 206 of 1985, the respondent was charged in the same Court and the charge stated:

> That you jointly on 14 December 1984 at about 3.22 a.m. at shop No. 5 SS 15/2A, in the District of Petaling, in the State of Selangor, in furtherance of the common intention of you all as defined under s. 34 of the Penal Code, committed housebreaking by night by entering the building belonging to one Liew Yoon IC 7563252, used for custody of property after sunset and before sunrise, in order to commit the offence of theft of:
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> 1. 1 Pioneer car radio Cassette S/No. EG 0823.
> 2. 1 Pioneer car radio Cassette S/No. EB 04182.
> 3. 1 Blaupunkt car radio Cassette S/No. 2727133368.
> 4. 1 Blaupunkt car radio Cassette S/No. 7643887010.
> 5. 1 Sansui Car radio Cassette S/No. AXL 9MU-J0380.
> 6. 1 Fujitsu Ten car radio Cassette S/No. 8801199.
> 7. 1 National Car radio Cassette S/No. 12665.
> 8. 1 Panasonic car radio cassette S/No. 29710.
> 9. 1 Clarion car radio Cassette S/No. 0003028.
> 10. 1 Sony car radio cassette S/No. 100305.
> 11. 1 Clarion car radio cassette S/No. 0004333.
> 12. 1 National car radio cassette S/No. 40710194.
> 13. 1 Alpine car radio cassette S/No. 40710194.

14. 1 Panasonic Transformer S/No. FA05275A.

15. 1 Pioneer Transformer S/No. 83074.

16. 1 Fujitsu Ten transformer S/No. 9000175.

17. 1 Blaupunkt Transformer S/No. T662232505.

to the total value of RM10,000 and that you have thereby committed an offence punishable under s. 457 of the Penal Code.

In both cases, the respondent pleaded guilty in the Magistrate's Court and in respect of 207/1985 he was sentenced to six months' imprisonment from the date of sentence and a fine of RM3,000 in default six months' imprisonment. In respect of 206/1985 he was sentenced to six months' imprisonment from the date of sentence and a fine of RM2,500 in default five months' imprisonment. The Public Prosecutor appealed against the sentences passed by the Magistrate.

The learned Deputy Public Prosecutor submitted that the sentences passed by the Magistrate were manifestly inadequate. The learned Deputy added that the sentences passed by the Magistrate was unrealistic in view of the circumstances of the two cases. According to the learned Deputy, the question of public interest was not adequately considered by the Magistrate. The learned Deputy added that the amount of goods recovered was only RM11,000.

Mr. Sequerah, Counsel for the respondent submitted that the respondent was eighteen years old when he was arrested. He said that the respondent had made a mistake and that he had regretted and repented for what he had done. Mr. Sequerah then quoted a passage in the judgment of Ajaib Singh J in *Chan Sit Hoong v. PP* [1975] 1 MLJ 261 @ 262, at p. 262. The passage reads:

He had shown some remorse by unhesitatingly pleading guilty to the offence charged on the every day that he was called upon to make his plea in Court.

The learned Deputy in her reply said that the respondent originally claimed trial and it was only at a later stage that the respondent decided to plead guilty. She agreed that in his plea of mitigation the respondent said he regretted having committed the offences and he also said that he had repented.

I do not think that the respondent had repented or regretted what he had done. In these two cases the total amount of goods stolen from the two premises was about RM70,000. It was through the efforts of the police that RM11,000 worth of goods were recovered. If the respondent had repented he would have returned, if not all, at least some of the goods to the police. He had not shown any cooperation with the police to return the stolen goods.

Mr. Sequerah submitted that by sending the respondent to prison, it might turn him to other criminal ways and any chance of reform would be lost. He added that the respondent had already served six months' imprisonment and that he had been released about two years ago. Mr. Sequerah submitted that the respondent was at a young and tender age and that he needed to be reformed.

The question for the Court to consider now is whether it should interfere with the sentences passed by the Magistrate. In both his grounds of judgment, the Magistrate stated, *inter alia*:

7. I've considered public interest, but in my opinion, public interest will be best served by sentencing him to a short period of imprisonment so that he can have a chance of improving himself after he served the 6 months' stint.

8. I feel that my sentence is appropriate even though it may not reflect adequacy.

In his grounds of judgment, the Magistrate said he had considered "public interest". At the same time he spoke of reformative punishment when he said that the respondent "can have a chance of improving himself ..."

In my opinion, the element of public interest was considered for the purpose of passing a deterrent sentence. See *R. v. Ball* [1952] 35 Cr App Rep 164. But what the Magistrate had in mind was reformative punishment. If the purpose of punishment was to reform the respondent, the Magistrate should have bound him over for a period of up to three years. Instead, the Magistrate ordered a short term imprisonment of six months. In his grounds of judgment the Magistrate also stated that his sentences were not adequate.

In the circumstances, this is a proper case for the Court to interfere with the sentences passed by the Magistrate. The next question to consider is, what is the proper punishment to be imposed on the respondent?

In both these cases, a retributive punishment has no application. Preventive punishment, too, is not an appropriate punishment. The question is whether reformative punishment is appropriate in the instant case. In my opinion, in view of the fact that the respondent had committed two serious offences within a period of three days, reformative punishment is not an appropriate punishment. It will be recalled that he committed the first offence on 11 December 1984, between 2.00 a.m. and 7.00 a.m. The second offence was committed on 14 December 1984 at 3.22 a.m., three days after the first offence was committed. In the circumstances the proper punishment is a deterrent punishment. The main aim of deterrent punishment is to protect the public interest. *R. v. Ball, supra* @ 165. It is generally accepted that the purpose of deterrent punishment is to deter others as well as to deter that particular criminal, in this case the respondent, from committing crime again. *R. v. Ball supra*. See also *R. v. Sargeant* [1974] 60 Cr App Rep 74. Under what circumstances does the Court impose a deterrent sentence? A deterrent sentence is of little value if it is passed in respect of an offence which is committed on the spur of the moment. In the instant case, both the offences were committed with premeditation and planning. The respondent and the other person at large brought together with them the equipment in order to effect entry into the premises. The offences were committed deliberately and with professional skill. It was not done on the spur of the moment. A deterrent sentence is, therefore, appropriate in this case since there was clearly premeditation. Premeditated crimes include crimes of **burglary**, robbery and use of firearms. See *R. v. Sargeant supra* p.77.

In this case, having taken into consideration the amount of goods stolen, the *modus operandi* of the respondent in committing the offences and the other relevant factors, I order that the respondent be sentenced to two years imprisonment, in respect of the first case and two years' imprisonment in respect of the second case. Both sentences are to run concurrently. The respondent had already served six months. The remaining period will be served from today.

In addition to the custodial sentences, it is also necessary to impose a fine in respect of each of the offences. First of all, the value of the goods stolen was RM70,000. Secondly, the respondent must have made a large profit from the offences committed. In view of the circumstances in this case it is justified to impose a fine on each of the offences. See *Zakariya*

bin Musa v. Public Prosecutor [1985] 2 MLJ 221. I accordingly order that the respondent be fined, in addition to the prison sentences, RM5,000 in respect of each case in default, one year's imprisonment.

I must add here that in enhancing the sentences, I have not overlooked the fact that the respondent was a first offender, that he was eighteen years old and that he pleaded guilty to the charge in both cases. I have taken into consideration all these factors as well as the facts and circumstances of the two cases.

Also found at [1988] 1 CLJ 76